

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,412	08/27/2003	Roger P. Jackson	. 10,321	5307
7590 12/27/2006 John C. McMahon PO Box 30069			EXAMINER SHAFFER, RICHARD R	
Kansas City, MO 64112			ART UNIT	PAPER NUMBER
			3733	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/27/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)				
	10/649,412	JACKSON, ROGER P.				
Office Action Summary	Examiner	Art Unit				
	Richard R. Shaffer	3733				
The MAILING DATE of this communication a	ppears on the cover sheet with the	correspondence address				
Period for Reply	·					
A SHORTENED STATUTORY PERIOD FOR REF WHICHEVER IS LONGER, FROM THE MAILING - Extensions of time may be available under the provisions of 37 CFR after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory perion. - Failure to reply within the set or extended period for reply will, by stat Any reply received by the Office later than three months after the mail earned patent term adjustment. See 37 CFR 1.704(b).	DATE OF THIS COMMUNICATION 1.136(a). In no event, however, may a reply be not will apply and will expire SIX (6) MONTHS froute, cause the application to become ABANDON	DN. timely filed om the mailing date of this communication. NED (35 U.S.C. § 133).				
Status						
1)⊠ Responsive to communication(s) filed on <u>08</u>	May 2006.					
	•					
· <u> </u>	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
closed in accordance with the practice under	r Ex parte Quayle, 1935 C.D. 11,	453 O.G. 213.				
Disposition of Claims						
4)⊠ Claim(s) <u>1-57</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
6)⊠ Claim(s) <u>1-57</u> is/are rejected.						
7) Claim(s) is/are objected to.	7) Claim(s) is/are objected to.					
8) Claim(s) are subject to restriction and	l/or election requirement.					
Application Papers						
9) The specification is objected to by the Exami	ner.					
10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.						
Applicant may not request that any objection to the	ne drawing(s) be held in abeyance. S	ee 37 CFR 1.85(a).				
Replacement drawing sheet(s) including the corre	ection is required if the drawing(s) is o	bjected to. See 37 CFR 1.121(d).				
11) ☐ The oath or declaration is objected to by the	Examiner. Note the attached Office	e Action or form PTO-152.				
Priority under 35 U.S.C. § 119	·					
12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a) ☐ All b) ☐ Some * c) ☐ None of:						
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No.						
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
Attachment(s)						
1) Notice of References Cited (PTO-892)	4) 🔲 Interview Summa	ry (PTO-413)				
2) D Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail	Date				
Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date	5) Notice of Informal 6) Other:	Patent Application				

Application/Control Number: 10/649,412

Art Unit: 3733

DETAILED ACTION

The petition filed on June 5th, 2006 has been dismissed for reasons separately mailed on December 8th, 2006, therefore Jackson (US Patent Application Publication 2002/0068973) remains prior art under 35 U.S.C. 102(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 57 is rejected under 35 U.S.C. 102(b) as being clearly anticipated (see Figures 1-7) by Jackson (US Patent Application Publication 2002/0068973).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US Patent Application Publication 2002/0068973).

Jackson discloses all of the claimed structure of the current application (see **Figures 1-7**) except for the device being made from a biologically inactive metal (claims 1, 13, 14), biologically inactive non-metal (claims 15, 27, 28), biologically active bone-based material (claims 29, 41, 42), or a non-bone based material (claims 53, 55, 56).

Art Unit: 3733

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Jackson from a material such as a biologically inactive metal, biologically inactive non-metal, biologically active bone based material, or a biologically active non-bone based material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's arguments filed May 8th, 2006 have been fully considered but they are not persuasive. As explained earlier, applicant's petition for priority has been dismissed. Therefore, the 2002/0068973 reference constitutes prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR.1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3733

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richard Shaffer

December 13th, 2006

Dichard Shaffer

EDUARDO C. ROBERT
PERVISORY PATENT EXAMIN